

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ERIC GRIFFIN,
#44575-048,

Petitioner,

vs.

RUSHINGS, *et al.*

Respondents.

2:11-cv-01246-KJD-CWH

ORDER

This prisoner civil action comes before the Court following upon petitioner's response (#8) to the Court's show cause order (#7), his motion (#9) to change venue, and his purported emergency motion (#10) for medical testing and care.

The show cause order directed petitioner to show cause why the application (#1) to proceed *in forma pauperis* should not be denied pursuant to 28 U.S.C. § 1915(g) because petitioner is seeking to avoid the three strikes provision of that statute by recasting what in truth is a civil rights complaint instead as a habeas petition, following upon a long history of frivolous filings in this District. See *Andrews v. King*, 398 F.3d 1113, 1122 n.12 (9th Cir. 2005); *Carson v. Johnson*, 112 F.3d 818 (5th Cir. 1997). The procedural background is detailed in the prior order. Petitioner's response to the show cause order is frivolous, including his conclusory allegation that his placement in administrative segregation as a federal pretrial detainee will affect the duration of his confinement. The application to proceed *in forma pauperis* therefore will be denied, the matter will be treated as a civil rights action on the

1 Court's docket, and the matter will be dismissed unless petitioner pays the full \$350.00 filing
2 fee applicable to a civil rights action within thirty days of entry of this order.

3 Petitioner's motion to change venue similarly is frivolous. There is no basis for a
4 change of venue on the ground of bias merely because a court rules against a party and/or
5 conducts initial review of initiating suit papers under the applicable statutes.

6 Petitioner's purported emergency motion for medical testing and care – to the extent
7 *arguendo* relevant to the claim in the initiating pleading in the first instance – is conclusory
8 and fails to present specific facts warranting emergency or other relief. As noted above, this
9 filing follows upon a long, long history of frivolous and vexatious filings in this District.

10 IT THEREFORE IS ORDERED that petitioner's application (#1) to proceed *in forma*
11 *pauperis* is DENIED, that the Clerk of Court shall change the nature of suit code on the action
12 to one for a prisoner civil rights action, and that this action shall be dismissed without
13 prejudice unless petitioner pays the full \$350.00 filing fee applicable to this civil rights action
14 within thirty (30) days of entry of this order.

15 IT FURTHER IS ORDERED that the Clerk shall send petitioner two copies of this
16 order. Petitioner shall make the necessary arrangements to have one copy of this order
17 attached to the check paying the filing fee. Failure to timely comply with this order will result
18 in the dismissal of this action without further advance notice.

19 IT FURTHER IS ORDERED that the motion (#9) for a change of venue and the
20 purported emergency motion (#10) for medical testing and care both are DENIED.

21 DATED: October 21, 2011

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26 KENT J. DAWSON
27 United States District Judge
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